

[JULY 20. 1745.]

INFORMATION

F O R

JANET YOUNG, Widow of *Richard Inglis*
Mason in *Dunbar*,

A G A I N S T

The Representatives of *Charles Fall* Merchant in
Dunbar.

THE said *Janet Young*, at her Husband's Death, anno 1724. was left with the Charge of many Children, most of whom she had the good Fortune to bring up, who are now working for their Bread. One of them, *Richard*, who was bred a Sailor, wanting to assist his indigent Mother, wrote her a Letter in August 1735. acquainting her he had saved the Sum of six Guineas, which might be of Use to her in her old Age, and desiring to know how he might remit the same. She having Confidence in *Charles Fall* Merchant in *Dunbar*, applied to him for Advice, and was directed to write to her Son to give in the Money to *Claud Johnston* Bankier in *London*, and to get a Bill from *Claud Johnston* upon him and Company, payable to her. This was done; the Bill came down to her in *October*, and she having presented the Draught to *Charles Fall* for Acceptance, he desired her to leave the same with him, promising Payment so soon as the Bill fell due. She applied for her Money when the Term of Payment came, was put off for some Time, and was afterwards told that she was to expect no Payment, being indebted to the Company in a greater Sum. At the Longrun he consented to settle her two Guineas in full, which she considered as so bad Treatment, that she was resolved to lose the Whole rather than submit to such a Composition.

Towards understanding this Cause, it is necessary to open the Circumstances of the Claim pretended to be due by *Janet Young* to the Company, upon which Compensation was thus obtruded. The Company having purchased from *Hepburn* of *Bienstoun*, and *Forrest* of *Gimmers-Mills*, certain Acres and Houses lying in and about the Town of *Dunbar*, obtained from the former a Disposition of his Half, bearing Date 25th of *November* 1732. and from the latter a Disposition of his Half, dated 23d of *June* 1733. The Company is assigned to the Mails and Duties of *Bienstoun's* Half of Crop 1728. and downwards, but they are only assigned to the Mails and Duties of *Gimmers-Mills* Half for Crop 1732. and it is specially to be noticed, that there is Exception from the Warrantice of both Dispositions, in the following Words. *Excepting always from the above Warrantice, all Right of Property, or Feu-Rights of the foresaid Tenement possessed by the Widow of Richard Inglis, or any Part thereof granted by my Predecessors or Authors to the Feuars and Possessors thereof, without Prejudice nevertheless to the said William Fall and Brothers, to quarrel and impugn the said Rights upon any Ground or Nullity in Law, which may not infer double Warrantice against me.*

Upon the Title of these Dispositions, the Company, in *April* 1734. brought a Process of Mails and Duties before their own Bailies of *Dunbar*, against many poor People Possessors of Subjects contained in the said Dispositions, and in particular against *Janet Young*; and, notwithstanding of the Tenor of the Dispositions above set forth, the Libel concludes against *Janet Young*, for the Sum of 18 L. Scots of yearly Rent for 40 Years bygone, extending to the Sum of 720 L. Scots. The Decreet bears, that *Janet Young* appeared personally, produced an Accompt of Reparations, amounting to 159 L. Scots, and denied that the Rent was above 14 L. Scots yearly, or that she had been

in

365

in Possession above 20 Years. The Decreet goes on, that the Pursuers acquiesced in the Acknowledgment; and so Decreet went against her for the Balance, being 200 L. 12 s. 8 d. Scots.

At the Time this Decreet was taken out, *Janet Young* was an old infirm Woman, who had never been taught to read or write. Farther, she was on the Poor's-Roll, as she had been ever since her Husband's Decease, in the Year 1724. One Thing is certain, that an inferior Decreet, taken against a Party upon an alledged Acknowledgment, where that Acknowledgment is not subscribed by the Party, or by Notaries, is but a slender Document of Debt; and it makes this Acknowledgment extremely suspicious, that she is brought in taking Burden of the Rent for 20 Years back, when her Husband died no earlier than the 1724. and so far from having Effects to subject her to a Representation, that she was put upon the Poor's-Roll immediately after his Decease; and if this pretended Acknowledgment is so little to be relied on as to the Time, it can bear no greater Faith as to the Extent of the Rent.

But it is still a more material Objection to the Decreet, That the Pursuers had the Assurance to take a Decreet against this poor Woman, for 20 Years backwards, when, by their own Titles, they could claim only the one Half from the Year 1728. and the other Half from the Year 1732. This is extremely gross. And it was no less oppressive to take a Decreet against her at all, when they had good Reason to be convinced, from their own Rights, that *Richard Inglis* the Husband had a Feu of this Subject, tho' the poor ignorant Possessor, his Relict, might not know this Matter of Fact.

In a Word, this Decreet, in many Views, is null and void, and can be no Evidence of Debt against *Janet Young*. Were there nothing else in the Matter, the small Sum of Rent they were intitled to levy from her, in virtue of the very Titles they produced, may, for ought appears in the Decreet, be exhausted by the very Repairs which they admitted of. The Claim they had of bygone Rents, even admitting there was to be 14 L. Scots yearly, does not amount to above 56 L. Scots. And, supposing Part of the 159 L. of Reparations to have been laid out after the Company's Purchase, there is an End of the Payment at once; and, at any Rate, so long as this Point of Fact is dubious, the Decreet is no Voucher of Debt.

This Decreet, however, with the Dread of *Charles Fall's* Name in the Town of *Dunbar*, made the poor Woman for a long Time despair of Redress, till, at the Long-run, encouraged by some of her Neighbours, she ventured to bring a Process against him, before the Justices of Peace of the County of *Haddington*. Her Story was lamentable, and she obtained Decreet, which was suspended almost as soon as obtained. The particular Steps of the Process it is unnecessary to trace out, farther than to observe, that the above mentioned Dispositions were not at this Time produced; and the Lord *Drummore* Ordinary having found the Letters orderly proceeded, which produced a Petition for *Charles Fall*, and Answers for *Janet Young*, the Lords, 21st December 1744. gave the following Deliverance. *The Lords having heard this Petition, with the Answers thereto, they turn the Decreet into a Libel, and, before Answer, ordain the Dispositions to the Tenement in question to be produced before the Ordinary in the Cause; and grant Diligence against Havers for recovering thereof; and remit to the Ordinary to proceed in the Cause.* And here it must be observed, that the single Ground the Court went upon, in pronouncing this Interlocutor, was the Incompetency of the Justices of Peace to judge in Actions of Debt, without being of Opinion that the Decreet was otherways well founded.

When this Process was brought back to the Lord Ordinary, the Dispositions were produced, and appeared to be as above stated; and his Lordship having heard Parties fully upon the Cause, took the Debate to Report, and appointed Informations to be given in.

The Pursuer insisted, That the Decreet of Mails and Duties was null and void, not only upon a most gross *mala fide pluris petitio*; but that it was otherways null, for Want of Evidence of the Quantum of the Rent: And farther, that it was no Evidence of Debt at all, in respect that the Reparations admitted of were much greater than any Rent that could be claimed by the Dispositions produced in Process. And it was farther observed, that, at any Rate, a Claim due to the Company could not be founded upon to compensate a private Debt due by *Charles Fall* alone.

It was owned for the Defender, That the Decreet was for several Years Rents, to which the Company had no Right; which has been owing to the Unskilfulness of their

their Procurator, apprehending that a Disposition of Property did give Right to by-gone Rents so far as resting ; but that the Blunder of a Procurator could not vitiate the Decerniture for the Rents which were truly due to the Pursuers, and which behoved to compensate *Janet Young's* Claim *pro tanto*. As to the separate Observation, That a Company Debt could not be founded upon to compensate a private Debt due by one of the Company, it was answered, That in Reality there was no Bill drawn by *Claud Johnston* upon *Charles Fall*, as appeared from a fitted Accompt betwixt him and the Company, wherein *Claud Johnston* gives them Credit for six Guineas received from *Janet Young's* Son, to whom, as the fitted Accompt bears, *Claud Johnston* granted a Receipt ; That this Receipt has been sent down by the young Man to his Mother, tho' it cannot now be recovered ; but that this Accompt shews the six Guineas was a Company Debt, and therefore a proper Subject to be compensated by a Debt due to the Company.

It was replied for the Pursuer, That the Defenders cannot be allowed to gainsay their Father's express Acknowledgment, which is, "That, by his Advice, the six Guineas were put in *Claud Johnston's* Hands, and a Bill drawn upon him payable to the Pursuer, which accordingly was done, and the Bill presented to him, which he desired the Pursuer to leave with him till the Term of Payment." That here is full Evidence of a Bill drawn on *Charles Fall*, and the plain Import of his Acknowledgment is, that he was bound to pay the six Guineas to the Pursuer, since it was by his Advice that this Method of transmitting the Money was chosen, beside that, the very Act of taking the Bill from the Pursuer, to be kept by him till the Term of Payment, speaks plainly out an Agreement to pay the Bill when it should fall due. And as *Charles Fall* was thus bound, by express Paction, to pay the Bill, and to deliver the six Guineas to the Pursuer, this was plainly passing from any Ground of Compensation.

2do. Whether he had engaged or not, there are really no *termini habiles* for Compensation in this Case. The Money belonged to *Richard Inglis* ; and if he purchased a Bill with it from *Claud Johnston*, drawn upon *Charles Fall*, who had *Claud Johnston's* Effects in his Hands at the Time, *Charles* was bound to accept and to pay in Terms of the Bill, and could plead no Defence against the Party to whom the Bill was made payable, more than against *Claud Johnston* himself. If I give a Sum to be delivered to a third Party, the Person trusted with the Money is bound by his Mandate to deliver. The Money is not his, nor can he withhold the Money upon any Ground of Compensation which he has against the third Party. The six Guineas, which *Claud Johnston* ordered Mr. *Fall* to pay to the Pursuer, was *Claud Johnston's* Money in Mr. *Fall's* Hands, and not Mr. *Fall's* own Money, and there were no *termini habiles* for Compensation.

3tio. It will not vary the Argument, supposing the Case to be as now set forth by the Defenders. Let it be so, that, instead of a Bill upon *Charles Fall*, *Richard Inglis* took a Receipt from *Claud Johnston*, yet this must be supposed, otherways the Transaction would be Nonsense, that *Claud Johnston* wrote to *Charles Fall* to pay the Money to the Pursuer ; and that he must have done so, appears from the very Accompt produced, wherein *Claud Johnston* gives Credit to Mr. *Fall* and Company for these very six Guineas, in Part of what they were owing him. He would not have given Credit had he not supposed the Money was paid, and he could not suppose this unless he had given Directions about it. Such a Letter, as to the Argument in Hand, is in every Shape equivalent to a Bill. Nothing was left to Mr. *Fall*, but to obey his Orders, by delivering *Claud Johnston's* Money to the Pursuer. Will he be allowed, first to take Credit against *Claud Johnston* for this Sum, as paid to the Pursuer, and at the same Time to take Credit against the Pursuer for what she may be owing to him ?

4to. Were Compensation relevant in this Case, all that appears to be due by the Decreet, compared with the Dispositions, amounts to but 56 L. Scots, and it is even uncertain from the Decreet, whether this Sum be due ; for it appears by the Decreet, that *Janet Young* was allowed an Accompt of Reparations amounting to 159 L. Scots. And supposing 56 L. of these Reparations to have been laid out after the Date of the Dispositions, about which the Decreet is silent, there is nothing due at all by the Decreet. At any Rate, the Decreet is null by a *pluris petitio* of the grossest Kind, and it cannot be sustained for any Part, when it does not appear whether a Shilling be truly due.

Upon the whole, it is hoped the Court will have no Difficulty to reject this groundless Claim of Compensation, and to decern for the six Guineas, with Annualrent from the 27th of *September* 1735. at which Time it appears that Mr. *Fall* got Credit for the same from *Claud Johnston*, instructed by the Accompt produced, and for the Expence of this Process.

In respect whereof, &c.

HEN. HOME.

